

TITLE 83: PUBLIC UTILITIES
CHAPTER I: ILLINOIS COMMERCE COMMISSION
SUBCHAPTER f: TELECOMMUNICATIONS CARRIERS

PART 780
RIGHT-OF-WAY PRECONDEMNATION NEGOTIATIONS
BY TELEPHONE COMPANIES

Section

780.5	Applicability
780.10	Right-of-Way Precondemnation Requirements
780.20	Precondemnation of Land Right-of-Way Easements
780.30	Compliance with Statute

APPENDIX A Company Statement

APPENDIX B Statement of information from the Illinois Commerce Commission
concerning acquisition of right-of-way by Illinois telephone companies

AUTHORITY: Implementing and authorized by Section 4 of the Telephone Company Act [220 ILCS 65/4] ~~“AN ACT relating to the powers, duties and property of telephone companies” (Ill. Rev. Stat. 1989, ch. 134, par. 20).~~

SOURCE: Adopted at 15 Ill. Reg. 5062, effective April 1, 1991; amended at ___ Ill. Reg.
_____.

NOTE: Capitalization denotes statutory language.

Section 780.5 Applicability

- a) This Part shall apply whenever any telephone company seeks to negotiate the acquisition of a land right-of-way easement pursuant to Section 4 of the Telephone Company Act [220 ILCS 65/4] ~~“AN ACT relating to the powers, duties and property of telephone companies” (Ill. Rev. Stat. 1989, ch. 134, par. 20)~~ (“Act”).
- b) As used in this Part, “telephone company” shall mean any entity to which the Act is applicable pursuant to Section 1 of the that Act [220 ILCS 65/1], including telecommunications carriers as defined in Section 13-202 of the Public Utilities Act [220 ILCS 5/13-202] ~~Universal Telephone Service Protection Law of 1985 (Ill. Rev. Stat. 1989, ch. 111 2/3, par. 13-202).~~
- c) This Part shall be prospectively applied. This Part shall not affect the following:

- 1) The validity of any existing certificate issued by the Illinois Commerce Commission ("Commission").
- 2) The validity of any existing easement.
- d) This Part shall not cause the revocation of any existing Commission certificate.

(Source: Amended at ___ Ill. Reg. _____, effective _____)

Section 780.10 Right-of-Way Precondemnation Requirements

- a) When a telephone company, or its agent, initially contacts any landowner to negotiate the acquisition of a land right-of-way easement, either in person or in writing, the landowner has any questions about his rights or the rules of the Commission pertaining to the authority of a telephone company to acquire right-of-way easements, inquiry can be directed to the Illinois Commerce Commission, 527 East Capitol Avenue, Springfield, Illinois 62701 ~~62706~~. The telephone company shall provide the landowner with a copy of Appendix A.
- b) Upon request of the landowner the telephone company shall provide the landowner with the information in Section 780.20(f)(1) and (2) and shall provide the landowner with a copy of Appendix B.

(Source: Amended at ___ Ill. Reg. _____, effective _____)

Section 780.20 Precondemnation of Land Right-of-Way Easements

- a) This Section shall govern the actions of every person acting in behalf of a telephone company when it has been unsuccessful in negotiating a land right-of-way easement, and intends to initiate formal action before the Commission or courts.
- b) At least 14 days prior to a telephone company filing a Petition for an Order under Section 8-503 of ~~the The~~ Public Utilities Act [220 ILCS 5/8-503] (~~Ill. Rev. Stat. 1989, ch. 111 2/3, par. 8-503~~) or initiating formal action before a court, as may be applicable, the telephone company representative shall send to the landowner a letter by certified mail, return receipt requested, containing the information detailed in subsection (d) ~~set forth below~~ together with a copy of Appendix B.
- c) The representative shall keep and maintain a record, for one year, of letters sent in compliance with this Section.

- d) The letter sent by the representative shall be on that representative's letterhead or on the letterhead of the telephone company and shall set forth:
 - 1) The identity, address and telephone number of the telephone company representative;
 - 2) The identity of the telephone company attempting to acquire the land or land rights;
 - 3) The general purpose of the proposed project;
 - 4) The type of facility to be constructed;
 - 5) The general description of the land or land rights the telephone company seeks to acquire and the type of structures, if any, which the company seeks to build;
 - 6) A statement that the company or its representative continues to seek to negotiate with the landowner to arrive at an agreement for such land or land rights; and
 - 7) An invitation to the landowner to contact the telephone company representative to arrange a mutually agreeable time for an appointment to further discuss the matter.
- e) Each telephone company representative shall carry with him/her and show to every landowner contacted an identification card showing the name and address of the contacting person and his/her employer. The contacting person shall leave his/her telephone number with the landowner.
- f) At the time of the contact, the telephone company representative shall:
 - 1) Orally state the reason for the contact, i.e., general purpose of the proposed project, type of facilities to be constructed; and
 - 2) Provide written information and data surrounding the proposed project. This shall include, to the extent then known to the telephone company, a statement outlining briefly the purpose of the project, a map or sketches indicating type(s) of facility, approximate location of facilities, compensation and basis for compensation and, if applicable, type of structures, and amount (length and width) of the land right-of-way deemed necessary. This information shall be left with the landowner for review, along with any agreement or contract proposed by the telephone company utility.

- g) If the company and the landowner do not reach agreement within two weeks ~~after~~ of the mailing of the original letter, the company may then file a Petition for an Order under Section 8-503 of the ~~The~~ Public Utilities Act, or may initiate formal action before a court.

(Source: Amended at ___ Ill. Reg. _____, effective _____)

Section 780.APPENDIX A Company Statement

Company Name _____

Company Address _____

Company Contact Name _____

Company Telephone Number _____

As a telephone company responsible for providing telephone service to this area, at times it becomes necessary to place new telephone facilities to serve new customers and improve service to existing customers.

We recognize your rights as a landowner and desire to negotiate with you for an easement to construct these necessary facilities.

Questions pertaining to your rights, as well as our rights to acquire right-of-way easements, may be directed to the Chief Telephone Engineer of the Illinois Commerce Commission, 527 East Capitol Avenue, Springfield, IL 62701 ~~62706~~, ~~telephone 217-785-8596~~.

Please do not hesitate to contact our representative for answers to questions pertaining to this project.

(Source: Amended at ___ Ill. Reg. _____, effective _____)

Section 780.APPENDIX B Statement of information from the Illinois Commerce Commission concerning acquisition of right-of-way by Illinois telephone companies

The purpose of this Statement is to provide you with the general information concerning the procedures involved. This Statement covers several questions commonly asked of the Illinois Commerce Commission staff by landowners.

This Statement is not a legal opinion concerning your rights under the law or the rules of the Commission, nor is it a detailed analysis of the procedures involved. If you have any questions concerning your legal rights, you may wish to consult an attorney.

Telephone companies and telecommunications carriers are granted the right of eminent domain or condemnation by Illinois law.¹ Eminent domain is simply the power of the State, or those delegated by the State, to take private property for public use upon payment of just compensation as determined by the courts.

Prior to attempting to acquire a right-of-way easement by applying to the courts to exercise the right of eminent domain or condemnation, a telephone company or telecommunications carrier shall attempt to secure the right-of-way easement through negotiations with the landowner.²

Negotiation means discussion and bargaining between the landowner and the telephone company or telecommunications carrier in an effort to arrive at an equitable agreement concerning the land or land rights and the price to be paid for such land or land rights. It does not mean that an agreement must be reached or that either the landowner or the telephone company or telecommunications carrier must agree with the other.

The price to be paid to the landowner by the telephone company or telecommunications carrier for the land or land rights is a matter of negotiation between the landowner and the telephone company or telecommunications carrier. The Commission does not participate in the negotiations, nor does it establish or approve the price. Specific information on the price to be offered for the land or land rights will be provided by the telephone company or telecommunications carrier representative.

The telephone company or telecommunications carrier representative may be negotiating with you for the acquisition of an easement for the use of the land or for the purchase of the land. In either case, the telephone company or telecommunications carrier will have its own form of easement or deed, as the Commission has no standard forms which the utility is required to use.

There is no certainty that the telephone company or telecommunications carrier will be allowed to acquire land or land rights through the use of eminent domain. However, you should not delay in contacting the telephone company or telecommunications carrier's representative to attempt to negotiate fair compensation for the land or land rights which the utility seeks.

If you have any questions about this Statement or the rules and procedures of the Illinois Commerce Commission, please contact the Chief Telephone Engineer, Illinois Commerce Commission, 527 East Capitol Avenue, Springfield IL 62701, ~~Illinois 62706~~. Any specific questions concerning your individual property should be addressed to the telephone company or telecommunications carrier representative.

¹~~220 ILCS 65 Ill. Rev. Stat. 1989, ch. 134, par. 17 et seq.~~

²~~735 ILCS 5/Art. VII Ill. Rev. Stat. 1989, ch. 110, pars. 7-101 et seq.~~

(Source: Amended at ___ Ill. Reg. _____, effective _____)